



California Regional Water Quality Control Board

San Diego Region



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

March 17, 2005

Metropolitan Transit System and
Development Board
Thomas F. Larwin,
General Manager
1255 Imperial Ave., Suite 1000
San Diego, CA 92101-1047

Certified Mail – Return Receipt Requested
7003 0500 0004 6402 6425

In reply refer to:
CA:10-3015837.02:rodrv

Dear Mr. Larwin:

SUBJECT: Complaint No. R9-2005-0062 For Administrative Civil Liability Against Metropolitan Transit System and Development Board for Violation of State Board Order No. 99-08-DWQ (WDID No. 9 37S320081)

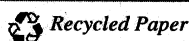
FACILITY: Mission Valley East Light Rail Transit Project (LRT) site (WDID NO. 9 37S315837)

Enclosed find Administrative Civil Liability Complaint No. R9-2005-0062 against Metropolitan Transit System and Development Board (MTDB) for the Mission Valley East Light Rail Transit Project (LRT) construction site located near I-8 and east of I-15 near La Mesa, California, WDID No. 9 37S315837. The Complaint in the amount of \$500,000 is for violations of Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity (General Permit)*.

Be aware that MTDB may waive its right to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board). Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the recommended assessment of civil liability in the amount of \$500,000 as set forth in the Complaint. Please note that any waiver will not be effective until reasonable opportunity for public participation has been provided pursuant to federal National Pollutant Discharge Elimination System (NPDES) regulations (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). The Regional Board will notify interested persons of any proposed settlement for the recommended liability and will solicit comments on the settlement for a period of thirty (30) days. In order for the Regional Board to accept the waiver of your right to a public hearing, MTDB must submit the following by 5:00 p.m., Friday **April 15, 2005**:

1. The enclosed waiver form signed by an authorized agent of MTDB; and
2. A cashier's check for the full amount of civil liability of \$500,000.

California Environmental Protection Agency



Mr. Larwin
Complaint No. R9-2005-0062

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March 17, 2005

Waivers submitted after April 15, 2005 will not be accepted.

If MTDB does not elect to waive its right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on May 11, 2005, at the Regional Board. An agenda, with procedures for the hearing will be mailed to you not less than ten days before the hearing date. The meeting is scheduled to begin at 9:00 a.m.

If MTDB intends to present any written exculpatory evidence, or written evidence in mitigation at the hearing in response to Complaint No. R9-2005-0062, it must be received by 5:00 PM, Wednesday, April 27, 2005 in order to be considered by the Regional Board at the public hearing. Please submit twenty (20) copies of any response, including evidentiary exhibits. Copies of material submitted will be forwarded to the Regional Board Members prior to the public hearing.

The Regional Board has established a written public comment period to solicit input on the Complaint. This includes publishing a notice in a local newspaper. The written public comment period for the Complaint ends at 5:00 PM Wednesday April 27, 2005. Oral comments can be made during the May 11, 2005 public hearing.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence to the Regional Board pertaining to this matter.

Please contact Vicente Rodríguez of my staff at (858) 627-3940 or VRodriguez@waterboards.ca.gov if you have any questions concerning this matter.

Sincerely,


John H. Robertus
Executive Officer

JHR:mpm:mja:vrr

Mr. Larwin
Complaint No. R9-2005-0062

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March 17, 2005

Enclosures:

1. ACL Complaint No. R9-2005-0062
2. Waiver of Hearing Form

cc: Michael Porter, Regional Board

Don Chadwick
CA Department of Fish and Game
4949 Viewridge Ct.
San Diego, CA 92123

Ellen Blake
WTR-7 US
EPA REGION 9
75 Hawthorne Street
San Francisco, CA 94105

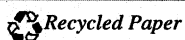
Karen Doty
Deputy District Attorney
330 W. Broadway, Ste. 700
San Diego, CA 92101

Karen Henry
City of San Diego
Storm Water Pollution Prevention
1970 B Street, Suite C - MS27A
San Diego, CA 92102

File: 10-3015837.02
WDID No. 9 37S315837

CA;10-315837.02;rodrv-TL;MTDB, MV East Light Rail Transit Project [2][mpm].doc

California Environmental Protection Agency



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:

METROPOLITAN TRANSIT SYSTEM AND
DEVELOPMENT BOARD
THOMAS F. LARWIN,
GENERAL MANAGER
1255 IMPERIAL AVE., SUITE 1000
SAN DIEGO, CA 92101-1047
NONCOMPLIANCE WITH STATE BOARD
ORDER NO. 99-08-DWQ

)
) COMPLAINT NO. R9-2005-0062
) FOR
) ADMINISTRATIVE CIVIL LIABILITY
)
) March 17, 2005
)
)
)
)
)
)

**THE METROPOLITAN TRANSIT SYSTEM AND DEVELOPMENT BOARD IS
HEREBY GIVEN NOTICE THAT:**

1. The Metropolitan Transit System and Development Board (MTDB) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability under section 13385 of the California Water Code.
2. MTDB owns and operates a construction site known as "Mission Valley East Light Rail Transit Project (LRT) site". The LRT site, of 134 acres, spans approximately six miles aboveground from the community of Grantville in the city of San Diego, underground through San Diego State University, and then back aboveground to the western side of the city of La Mesa near Interstate 8. The LRT site is subject to waste discharge requirements, contained in *State Water Resources Control Board (9SWRCB) Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements (WDRS) for Discharges of Storm Water Runoff Associated with Construction Activity* (Order No. 99-08-DWQ). MTDB enrolled for regulation under these requirements on May 29, 2001 (WDID No. 37S315837).

ALLEGATIONS

3. Discharge of Sewage to Waters of the Nation
MTDB discharged sewage to waters of the nation in violation of State Board Order No. 99-08-DWQ section A.2. Sewage was discharged from the LRT site to Alvarado Creek on October 27, 2004.

4. Discharge of Sediment to a MS4 and Waters of the Nation

MTDB discharged sediment to a Municipal Separate Storm Sewer System (MS4) and waters of the nation in violation of State Board Order No. 99-08-DWQ section A.2. Sediment was discharged from the LRT site to Alvarado Creek directly or via the City of San Diego's MS4 on at least 27 days:

No.	Date	No.	Date	No.	Date
1.	8/21/2002	11.	2/5/2004	21.	10/5/2004
2.	8/26/2002	12.	2/11/2004	22.	10/17/2004
3.	9/6/2002	13.	2/18/2004	23.	10/18/2004
4.	11/9/2002	14.	2/23/2004	24.	10/19/2004
5.	11/29/2002	15.	2/26/2004	25.	10/20/2004
6.	12/16/2002	16.	3/2/2004	26.	10/27/2004
7.	2/19/2003	17.	3/3/2004	27.	12/6/2004
8.	2/25/2003	18.	4/17/2004		
9.	3/15/2003	19.	4/19/2004		
10.	12/25/2003	20.	10/4/2004		

5. Failure to Implement Storm Water Pollution Prevention Plan

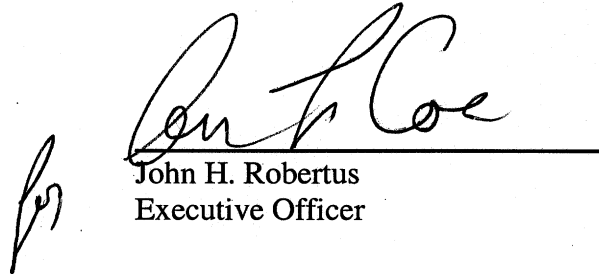
MTDB failed to implement its Storm Water Pollution Prevention Plan (SWPPP) by failing to implement adequate and/or maintain Best Management Practices (BMPs) in violation of State Board Order No. 99-08-DWQ section C.2 during the rain season on at least 449 days:

- a. October 1, 2002 through April 30, 2003 (211 days);
- b. October 1, 2003 through April 30, 2004 (212 days); and
- c. October 1, 2004 through October 27, 2004 (26 days).

PROPOSED CIVIL LIABILITY

6. Based on consideration of the factors listed in section 13385 of the California Water Code, civil liability should be imposed on the Metropolitan Transit System and Development Board by the Regional Board in the amount \$500,000 for all the violations, as follows:
- a. \$10,000 for the violation described in paragraph No. 3;
 - b. \$270,000 for the violations described in paragraph No. 4; and
 - c. \$220,000 for the violations described in paragraph No. 5.

Dated this 17th day of March 2005


John H. Robertus
Executive Officer



California Regional Water Quality Control Board

San Diego Region



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WAIVER OF RIGHT TO A PUBLIC HEARING

Metropolitan Transit System
and Development Board
Thomas F. Larwin
General Manager
1255 Imperial Ave., Suite 1000
San Diego, CA 92101-1047

Administrative Civil Liability
Complaint No. R9-2004-0069
\$500,000
March 17, 2005

WDID No. 9 37S315837

By signing below, I agree to waive Metropolitan Transit System and Development Board (MTDB)'s right to a public hearing before the California Regional Water Quality Control Board, San Diego Region with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am authorized to give up MTDB's right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

Title

Date

Print your name

Send this signed form to:

John H. Robertus, Executive Officer
C/O Compliance Assurance Unit
California Regional Water Quality Control Board – San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

California Environmental Protection Agency